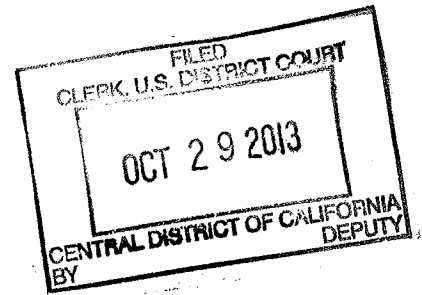


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[additional plaintiffs' counsel on signature page]

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION

CV13-7991 CBM (MAN x)

HARVEY DUNN, individually and on
 behalf of all other similarly situated,

Plaintiff,

vs.

AOL, INC.,

Defendant.

Case No.

CLASS ACTION

COMPLAINT FOR:

- (1) Violation of California Civil Code § 1750 *et seq.* (Consumer Legal Remedies Act);
- (2) Violation of California Business & Professions Code § 17200 *et seq.* (Unfair Competition); and
- (3) Unjust Enrichment

DEMAND FOR JURY TRIAL

COPY

1 Plaintiff Harvey Dunn (“Dunn” or “Plaintiff”), individually and on behalf of
2 the class defined below, by his undersigned counsel, alleges the following upon
3 personal knowledge as to his own acts and, as to all other allegations, upon
4 information and belief and investigation by counsel, including a review of publicly
5 available documents.

6
7 **NATURE OF THE ACTION**
8

9 1. Plaintiff, like millions of other AOL customers, is a senior citizen and
10 not tech-savvy. When he signed up for AOL over ten years ago, he was paying for
11 AOL dial-up access to the internet, and also for AOL content and email. AOL
12 subsequently changed its policies, and stopped charging for its content and email,
13 but failed to properly disclose that to its paying customers, all the while billing
14 them using the same inadequate terminology as before -- which simply said “AOL
15 Service.”

16 2. When Plaintiff switched in January 2011 to Time Warner broadband
17 to obtain faster internet speeds, it was no longer necessary for him to pay AOL for
18 anything—indeed, AOL was offering the email/content services he used for free,
19 and the dial-up ISP service of days gone by was duplicative and vastly inferior.
20 However, he continued to receive, and pay, \$17.99 per month to AOL for what
21 AOL simply listed as “AOL Service,” thus recklessly perpetuating the illusion that
22 paying subscribers are still receiving and using the same service they signed up for.

23 3. AOL is well aware that the vast majority of its paying customers are
24 not using its nearly obsolete “dial-up” services, and misunderstand what they are
25 paying for. AOL’s technology allows it to easily tell which of its paying customers
26 are using AOL’s dial-up ISP services. AOL knows that Plaintiff, and millions of
27 other consumers have absolutely no use for their paid accounts, or AOL dial-up
28 service they do not need and are not using.

1 4. However, AOL is financially motivated to keep its still paying
2 customers in the dark because their subscription services account for over 30% of
3 AOL's revenues, and still accounts for the vast majority of AOL's profits.

4 5. Plaintiff brings this class action on behalf of himself and a class of
5 residents of California ("Class Members") that purchased AOL dial-up services to
6 use as their internet service provider ("ISP"), and were charged for those services
7 despite having not used AOL's dial-up for at least three consecutive months. The
8 Class Period is October 29, 2009, through the filing of the class certification
9 motion in this litigation (the "Class Period").

10 6. Plaintiff brings claims for Defendant's violations of the California
11 Unfair Business Practices Act, Business & Professions Code section 17200 *et seq.*;
12 the California Consumer Legal Remedies Act, Civil Code section 1750 *et seq.*;
13 and Unjust Enrichment. Plaintiff and the Class seek declaratory judgment,
14 injunctive relief, restitution and disgorgement of Defendant's profit from the false
15 representation that Plaintiff and the Class have to continue making monthly
16 payments in order to access AOL service.

17 **JURISDICTION AND VENUE**

18 7. This Court has jurisdiction over the state law claims pursuant to 28
19 U.S.C. § 1332(d) because there are at least 100 Class Members in the proposed
20 Class, the combined claims of proposed Class Members exceed \$5,000,000
21 exclusive of interest and costs, and at least one Class Member is a citizen of a state
22 other than Defendant's state of citizenship (New York).

23 8. Venue is proper pursuant to 28 U.S.C. § 1391(a) because a substantial
24 part of the events giving rise to the claims asserted herein occurred in this District.
25 Specifically, Plaintiff resides in this District, is a citizen of this District, and has for
26 virtually all the time relevant herein (through August 2013) been charged by AOL
27 to provide a service to his home in this District. Venue is proper pursuant to 28

1 U.S.C. § 1391(c) because Defendant conducts substantial business in this District,
2 has sufficient minimum contacts with this District, and otherwise purposely avails
3 itself of the markets in this District, through the promotion, sale, marketing and use
4 of AOL services in this District. In addition, thousands of California consumers are
5 members of the class.

6 7 **THE PARTIES**

8 9. Plaintiff Dunn is and was at all times relevant herein, a resident of Los
9 Angeles County, California. Plaintiff Dunn is 76 years old. Plaintiff Dunn began
10 using AOL as his primary Internet Service Provider more than 10 years ago.
11 Plaintiff was charged \$17.95 a month on his credit card for AOL service. The
12 AOL charge on his credit card statement says only “AOL Service.” Plaintiff
13 requested a detailed billing statement from AOL and was provided a statement that
14 also says only “AOL Service.” Unaware that AOL had years earlier stopped
15 charging for virtually all of the “services” Plaintiff understood he was paying for,
16 Plaintiff reasonably believed such payments were necessary for him to access the
17 internet and his AOL content (such as his AOL email account and individualized
18 settings on the AOL website), which were the reasons he became an AOL
19 subscriber. In January, 2011, Plaintiff began using Time Warner broadband
20 services for faster internet but did not cancel his AOL account at that time because
21 he reasonably thought he was still required to have AOL in order to access the
22 internet and his AOL content, even though he did not need AOL dial-up to access
23 the internet. When Plaintiff learned that he could get the same “AOL content”
24 with a free AOL account, Plaintiff cancelled his AOL subscription in August 2013.

25 10. Defendant AOL, Inc., (“AOL”) is a Delaware Corporation with its
26 principle place of business at 770 Broadway, New York, New York. The
27 company’s business spans digital distribution of content, products, and services,
28 which it offers to consumers, publishers, and advertisers.

HISTORY OF AOL SERVICE

11. At the dawn of the internet era in the 1990s, a small number of companies provided the gateways through which technology savvy consumers could access the world-wide-web, and use primitive web features like chat-rooms. Companies such as AOL, Prodigy, CompuServe provided users in-home access to the internet, often for an hourly fee.

12. These companies were early Internet Service Providers (ISPs), which connected users to the internet using telephone lines. Consumers could use their phone lines to “dial-up” an ISP, and have access to email and the growing amount of information available on the internet.

13. By the late 1990s AOL dominated the consumer internet market. Along with connecting customers to the internet with its ISP service, AOL offered email and various “channels” that provided content for aggregated information such as news, reference, travel, and so on. AOL thus functioned as an ISP, a content provider, and a hub or portal to content provided by others—similar to Yahoo.com, MSN.com and Google.com. Below is the home page of AOL version 2.5, as it appeared in 2003:



14. In 1996 AOL revolutionized in-home internet communication by offering its email, chat, and other services for a flat rate of \$19.95 a month. For this flat fee, users could access AOL's web content, including email, chat, AOL Instant Messenger, in addition to connecting to the internet through AOL's dial-up service.

15. AOL was thus offering a total-package of bundled internet services to its paying subscribers. It is estimated that roughly one half of the people in the U.S. using the internet at the time did so through AOL.

16. In 2002 the Company had over 35 million subscribers who used AOL as their primary, if not only, means to access the growing internet. AOL was their primary content provider, the host of their email accounts, and their ISP.

17. However, as technology improved, telecommunication companies began offering consumers access to much faster "broadband" internet connections, and AOL's customer base began to dramatically decrease. Content began to be offered by many other companies, including established news organizations, publishers and individuals. AOL's grip on the internet as a one-stop-shop for access, content and links eroded as people began accessing the internet through

1 faster connections, using search engines and other portals as their home screens
2 and launching point for content.

3 18. In 2006 AOL made the strategic business decision to *stop charging*
4 for services that it previously bundled with its ISP services. By continuing to link
5 its decreasingly popular dial-up ISP services with its portal/email services, AOL
6 had been losing not only paid subscribers but users of its content, links and portal
7 services, costing it advertising revenue and steering it towards internet irrelevancy.
8 AOL hoped that it could still remain relevant as a provider of portal services,
9 instead of sending AOL content/portal users into the arms of Yahoo!, Microsoft,
10 Google, and many other providers of free email and portal services. Accordingly,
11 the Company began giving away e-mail accounts and other internet services, such
12 as parental-control and security tools, and the content channels on its AOL.com
13 website. However, *AOL never properly notified its paying customers of this*
14 *fundamental change.*

15 19. Media reports from the time suggest that the move came “as AOL
16 struggle[d] to reinvent itself as millions of dial-up Internet users cancel[ed] their
17 subscriptions and jump[ed] to high-speed connections.” Sara Kehaulani Goo, *In*
18 *Strategy Shift, AOL Makes Most Services Free*, Washington Post (August 3, 2006),
19 [http://www.washingtonpost.com/wp-](http://www.washingtonpost.com/wp-dyn/content/article/2006/08/02/AR2006080200360.html)
20 [dyn/content/article/2006/08/02/AR2006080200360.html](http://www.washingtonpost.com/wp-dyn/content/article/2006/08/02/AR2006080200360.html).

21
22 **AOL Knowingly Charges Customers For Services**
23 **They Did Not Need And Do Not Use**

24 20. While the company recognized that dial-up was a thing of the past,
25 and decided to increase advertising revenue by offering free content on-line, it
26 exploited the large disparity of technical knowledge between it and its customers
27 by not properly explaining to customers that the reasons that prompted customers
28 to obtain an AOL subscription had fundamentally changed. In fact, those reasons

1 (ISP services plus content) no longer existed for Plaintiff and members of the
2 Class.

3 21. AOL charges its subscribers, including Plaintiff, by directly billing the
4 customers' credit card every month.

5 22. AOL's monthly charge on customers' credit cards, like the charge
6 Plaintiff received each month, do not specify which services customers are paying
7 for, and, as noted above, instead lists simply "AOL Service." This representation
8 perpetuates the illusion that paying subscribers are still receiving and using the
9 same service as before.

10 23. AOL is financially motivated to keep its still paying customers in the
11 dark because their subscription services account for over 30% of AOL's revenues,
12 and still accounts for the vast majority of AOL's profits, " specifically generat[ing]
13 *more than all* of the company's profits, after accounting for AOL's corporate
14 costs." Henry Blodget, *AOL's Dial-Up Subscription Business Produces More Than*
15 *All of the Company's Profit*, Business Insider (Feb. 8, 2013, 9:18 AM),
16 <http://www.businessinsider.com/aol-subscription-business-profit-2013-2> (emphasis
17 in original); *see also* AOL Form 10-K, filed February 28, 2013, at 28.

18 24. Indeed, that AOL is recklessly exploiting its paying customers is an
19 open secret within the industry and inside AOL's corporate offices.

20 25. As one newspaper described it: "For five years, AOL has been
21 cashing in on users who don't know they can cancel the paid service and still get
22 all the benefits." Jim Hillibish, *On Computers--Still paying for AOL?*,
23 CantonRep.com (Feb. 7, 2011, 1:00 PM),
24 [http://www.cantonrep.com/news/business/x549729983/On-Computers-Still-](http://www.cantonrep.com/news/business/x549729983/On-Computers-Still-paying-for-AOL#ixzz2fIV5DI5u)
25 [paying-for-AOL#ixzz2fIV5DI5u](http://www.cantonrep.com/news/business/x549729983/On-Computers-Still-paying-for-AOL#ixzz2fIV5DI5u).

26 26. On January 24, 2011, *The New Yorker* published an article about
27 AOL's newly hired CEO. In the article, the authors report that, "The company still
28

1 gets *eighty per cent of its profits* from subscribers, *many of whom are older*
 2 *people who have cable or DSL service but don't realize that they need not pay an*
 3 *additional twenty-five dollars a month to get online and check their e-mail.*" Ken
 4 Auletta, *Can Tim Armstrong Save AOL?*, The New Yorker, Jan. 24, 2011,
 5 http://www.newyorker.com/reporting/2011/01/24/110124fa_fact_auletta (emphasis
 6 added).

7 27. The article also quotes a former AOL executive as saying, "*The dirty*
 8 *little secret . . . is that seventy-five per cent of the people who subscribe to AOL's*
 9 *dial-up service don't need it.*" *Id.* (emphasis added).

10 28. Similarly technology blog TechCrunch reported in 2012 that
 11 proposals to educate and specifically disabuse customers of the misapprehension
 12 that they need to pay AOL for the internet were considered internally by AOL
 13 executives but *specifically rejected by AOL higher ups*:

14 A[OL] intentionally doesn't try too hard to educate these legacy
 15 customers about their email package now being free. We also heard
 16 that when A[OL] came out with the new 'Project Phoenix' Mail
 17 product in 2010, many in A[OL] Consumer Applications wanted to
 18 market it as being free but their suggestions were overturned by
 19 higher-ups as the percentage of misinformed subscribers still ponying
 20 up just to use A[OL] Mail is very profitable.

21 Alexia Tsotsis, *Why Is Aol Still Charging People For "Email"?*, TechCrunch Blog
 22 (Jan. 4, 2012), <http://techcrunch.com/2012/01/04/aol-mail/>.

23 29. A recent article in the *Washington Post*, points out that while AOL's
 24 most recent earnings figures estimate 2.5 million customers still pay for AOL dial-
 25 up monthly, "[n]ot all of those people are even aware that they're still paying,
 26 which makes AOL's continued earnings from dial-up services a particularly genius
 27 form of memory-hole leeching." Brian Fung, *The slow death of dial-up: 2 percent*
 28

1 of us still use AOL, Wash. Post, Aug. 7, 2013,
 2 [http://www.washingtonpost.com/blogs/the-switch/wp/2013/08/07/the-slow-death-
 4 of-dial-up-2-percent-of-us-still-use-aol/](http://www.washingtonpost.com/blogs/the-switch/wp/2013/08/07/the-slow-death-

 3 of-dial-up-2-percent-of-us-still-use-aol/) (emphasis added).

5 30. In 2012, *The New Yorker* reported: “Gradually, these people [paying
 6 subscribers] are dying off, or, with the help of their grandkids, figuring things out.
 7 AOL has known for a long time that it needs to find new revenue streams, but it
 8 has done so slowly.” Nicholas Thompson, *You’ve Got Patents: AOL’s Desperate*
 9 *Move*, The New Yorker Blog (Apr. 9, 2012),
 10 <http://www.newyorker.com/online/blogs/culture/2012/04/aol-patents.html>.

11 31. An *ABC News* report from Las Vegas in 2012 stated: “More than three
 12 million people still use AOL dial-up. Millions more kept their e-mail addresses.
 13 Many who thought they had the free version, however, are actually paying for it,
 14 and it’s costing them big time. Angela lives in Summerlin. In 1995, she and her
 15 family signed up for AOL. Back then, it was their primary Internet service
 16 provider. In 2006, AOL started offering its services for free. Millions of people
 17 took advantage of that, but ***millions more like Angela assumed they were no***
 18 ***longer being charged***. Since they never canceled their automatic payments, they
 19 have been unnecessarily giving AOL \$17.95 a month for six years.” Michelle
 20 Mortensen, *Customers Still Paying for Free AOL Service*, 8 News NOW, (Dec. 11,
 21 2012, 7:35 AM), [http://www.8newsnow.com/story/20312670/customers-still-
 23 paying-for-free-aol-service](http://www.8newsnow.com/story/20312670/customers-still-

 22 paying-for-free-aol-service) (emphasis added).

24 32. A 2011 article from *Business Insider* suggested: “Unless AOL can
 25 figure out a way to give subscribers something that they *do need to pay for* (and
 26 then keep paying), this will eventually come to an end. AOL is down from 35
 27 million subscribers in 2002. But if a big portion of AOL’s subscribers really are
 28 only paying the company because they think they have to keep using their free
 email, you have to agree—this is not ending fast enough.” Nicolas Carlson, *AOL’s*

1 *"Dirty Secret": Email This Post To Your Parents And Grandparents To Make Sure*
2 *They Aren't Paying AOL When They Don't Have To*, Business Insider (Jan. 20,
3 2011, 3:17 PM), [http://www.businessinsider.com/how-to-cancel-](http://www.businessinsider.com/how-to-cancel-aol?op=1#ixzz2flURC0qj)
4 [aol?op=1#ixzz2flURC0qj](http://www.businessinsider.com/how-to-cancel-aol?op=1#ixzz2flURC0qj) (emphasis in original).

5 33. Consistent with these reports, AOL's most recent annual report filed
6 with the Securities and Exchange Commission on Form 10-K explains that "[t]he
7 average paid tenure of our domestic AOL-brand access subscribers was
8 approximately 12.9 years and 11.7 years for the three months ended June 30, 2013
9 and 2012, respectively." AOL does not get new paying dial-up customers.
10 Instead, it preys on customer confusion that it knows about, knowingly
11 perpetuates, and could easily fix, but which it continues to exploit for profit.

12 **CLASS ALLEGATIONS**

13 34. Plaintiff brings this action on its own behalf and as a Class Action
14 pursuant to Rules 23(a), and 23(b)(3) of the Federal Rules of Civil Procedure, on
15 behalf of a class defined as:

16 All residents of California ("Class Members") who, from October 29,
17 2009, through the filing of the class certification motion in this
18 litigation, purchased AOL dial-up services as their internet service
19 provider ("ISP"), and were charged for those services despite having
20 not used AOL's dial-up for at least three consecutive months.

21 35. In the alternative, Plaintiff brings this action on its own behalf and as
22 a Class Action pursuant to Rules 23(a), and 23(b)(2) of the Federal Rules of Civil
23 Procedure, on behalf of a class defined the same as above, seeking injunctive relief
24 prohibiting AOL from continuing these practices, and ordering the Company to
25 send out court-approved notices explaining that customers do not need to pay
26 monthly to access their accounts, and requiring consumers to affirmatively opt-in
27 to ISP service.

1 36. Plaintiff and the members of the Class are so numerous that joinder of
2 all members individually, in one action or otherwise, is impractical.

3 37. This action involves questions of law and fact common to Plaintiff
4 and all members of the Class, which include:

5 (a) Whether Defendant charges an improperly disclosed fee to
6 consumers who do not use AOL dial-up;

7 (b) Whether Defendant violated California Civil Code Section
8 1750 *et seq.*;

9 (c) Whether Defendant violated California Business & Professions
10 Code Section 17200 *et seq.*;

11 (d) Whether Plaintiff and Class Members sustained damages
12 resulting from Defendant's conduct and, if so, the proper measure of damages,
13 restitution, equitable or other relief, and the amount and nature of such relief.

14 38. Plaintiff understands and is willing to undertake the responsibilities of
15 acting in a representative capacity on behalf of the proposed Class. Plaintiff will
16 fairly and adequately protect the interests of the Class and have no interests
17 adverse to or that directly conflict with the interests of the other members of the
18 Class.

19 39. Plaintiff has engaged the services of counsel who are experienced in
20 complex class litigation, who will adequately prosecute this action, and will assert
21 and protect the rights of and otherwise represent Plaintiff and the absent Class
22 Members.

23 40. Plaintiff's claims are typical of those of the absent Class Members
24 because Plaintiff and the Class Members each sustained damages arising from
25 Defendant's wrongful conduct, as alleged more fully herein. Class members are
26 easily identifiable by AOL through automated/computerized methods; AOL knows
27
28

1 who its paying customers are and can identify which of them stopped using dial-up
2 ISP services and when they did so.

3 41. This action is brought under Rule 23 because Defendant has acted on
4 grounds generally applicable to all members of the Class.

5 42. Judicial determination of the common legal and factual issues
6 essential to this case would be far more efficient and economical as a class action
7 than piecemeal individual determinations.

8 43. Plaintiff knows of no difficulty that will be encountered in the
9 management of this litigation that would preclude its maintenance as a class action.
10

11 **COUNT I**

12 **Violation of California Civil Code Section 1750 *et seq.***

13 **[Consumer Legal Remedies Act]**

14 44. Plaintiff incorporates the above allegations by reference as though
15 fully set forth herein.

16 45. This cause of action is brought pursuant to the Consumer Legal
17 Remedies Act (CLRA) and seeks relief for the sale or lease of goods or services to
18 consumers.

19 46. AOL's actions, omissions, representations and conduct have violated,
20 and continue to violate, the CLRA because they extend to transactions that are
21 intended to result, or which have resulted, in the sale or lease of goods or services
22 to consumers.

23 47. Plaintiff is a "consumer" as that term is defined by the CLRA in
24 California Civil Code § 1761(d).

25 48. AOL ISP and internet content are "goods" and/or "services" within
26 the meaning of California Civil Code § 1761 (a) and (b).
27
28

1 49. By engaging in the actions, representations and conduct set forth in
2 this complaint, AOL has violated, and continues to violate, § 1770(a)(5). AOL's
3 acts and practices constitute unfair methods of competition and unfair or deceptive
4 acts or practices because they misrepresent the characteristics, benefits, and uses of
5 the internet services in they provide to customers by not informing customers that
6 the monthly charge is necessary only to continue receiving dial-up services, which
7 class members do not need, and do not use.

8 50. By engaging in the actions, representations and conduct set forth in
9 this Class Action Complaint, AOL has violated, and continues to violate,
10 § 1770(a)(16) of the CLRA. Specifically, in violation of California Civil Code
11 § 1770(a)(16), AOL's acts and practices constitute unfair methods of competition
12 and unfair or deceptive acts or practices in that *they represent that the subject of a*
13 *transaction has been supplied in accordance with a previous representation*
14 *when it has not*. When customers, like Plaintiff, became AOL subscribers, their
15 monthly bill for "AOL Service," provided them access to dial-up internet, along
16 with their AOL account and AOL content. By continuing to charge a monthly fee
17 for "AOL Service," without explaining that the fee is no longer necessary to access
18 AOL accounts or content, and without explaining exactly what it is that the
19 customer continues to pay for (which had changed dramatically since the time
20 customers originally subscribed to AOL), AOL represents that its monthly service
21 had been supplied in accordance with previous representations, when it has not.

22 51. Pursuant to section 1782(a) and (d) of the CLRA, on July 30, 2013,
23 Plaintiff, by his counsel, (i) notified Defendant, by means of a letter sent to
24 Defendants via certified mail, of its particular violations of the CLRA, as alleged
25 herein, (ii) demanded that Defendant correct said violations, and (iii) notified
26 Defendant of his intent to seek damages on that claim, pursuant to California Civil
27
28

1 Code section 1782(a). A true and correct copy of the demand letter, and return
2 receipt is attached as Exhibit A.

3 52. Defendants did not respond to Plaintiff Dunn's notice and demand
4 letter within 30 days, or at all.

5 53. Plaintiffs request that this Court enjoin AOL from continuing to
6 employ the unlawful methods, acts and practices alleged herein pursuant to
7 California Civil Code § 1780(a)(2). If AOL is not restrained from engaging in
8 these types of practices in the future, Plaintiff, members of the Class and other
9 members of the general public will continue to suffer harm.

10 54. Defendant's conduct in continuing to charge Plaintiff and Class
11 Members in the manner described above was an unfair act and practice which
12 caused them to suffer a substantial loss of income and caused financial, emotional,
13 and physical distress.

14 55. Further, Plaintiff, and many class members are senior citizens within
15 the meaning of California Civil Code Section 3345 and as a consequence of
16 Defendant's wrongful actions herein, Plaintiff is entitled to a trebling of any
17 damages imposed by the trier of fact pursuant to Sections 1780(b)(1) and 3294 of
18 the California Civil Code.

19 56. The Class incurred monetary damages from Defendant's conduct
20 equal to the amount AOL charged them monthly for dial-up.

21 57. Plaintiff and Class Members seek restitution, declaratory and
22 injunctive relief, and other relief allowable under Section 1750 *et seq.*

23 **COUNT II**

24 **Violation of California Business and Professions Code Section 17200 *et seq.***

25 58. Plaintiff incorporates the above allegations by reference as though
26 fully set forth herein.
27
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1 59. The circumstances giving rise to Plaintiff's allegations occurred in the
2 State of California, where Plaintiff has resided at all relevant times, and where he
3 continues to reside. Therefore, application of California law is appropriate.

4 60. By engaging in the acts and practices described above, Defendant
5 committed one or more acts of "unfair competition" within the meaning of
6 Business & Professions Code Section 17200. "Unfair competition" is defined to
7 include any "unlawful, unfair or fraudulent business act or practice and unfair,
8 deceptive, untrue or misleading advertising and any act prohibited by [Business &
9 Professions Code § 17500 *et seq.*]."

10 61. Defendant committed "unfair" business acts or practices by, among
11 other things:

12 (a) engaging in conduct where the utility of such conduct, if any, is
13 outweighed by the gravity of the consequences to Plaintiff and Class Members;

14 (b) engaging in conduct that is immoral, unethical, oppressive,
15 unscrupulous, or substantially injurious to Plaintiff and Class Members; and

16 (c) engaging in conduct that undermines or violates the spirit or
17 intent of the consumer protection laws alleged in this Complaint.

18 62. Plaintiff and Class Members lost money and suffered injury in fact,
19 including damage from being continually charged for services that were obsolete
20 and that they no longer used or needed, or that were being provided at no cost, and
21 because Defendant failed to properly disclose this information to Plaintiff and
22 Class Members and perpetuated the illusion with inadequate descriptions of "AOL
23 Service" on credit card and/or billing statements as alleged above. The amount of
24 the injury is equal to the AOL customer's monthly charge, which, in Plaintiff's
25 case, was \$17.95. Plaintiff and Class Members would not have paid Defendant if
26 they had been aware of the incomplete nature of Defendant's representations about
27 their participation in AOL service.
28

1 A. An order certifying this case as a class action and appointing Plaintiff
2 and his counsel to represent the Class Members;

3 B. An order declaring that the acts and practices of Defendant constitute
4 violations of California Business & Professions Code § 17200 *et seq.*; California
5 Civil Code (CLRA) § 1750 *et seq.* and constitute unjust enrichment;

6 C. For damages pursuant to California law in an amount to be
7 determined at trial, including interest;

8 D. For restitution for monies wrongfully obtained and/or disgorgement of
9 ill-gotten revenues and/or profits;

10 E. A permanent injunction enjoining Defendant from continuing to harm
11 Plaintiff and the members of the Class and violating California law;

12 F. An order requiring Defendant to adopt and enforce a policy that
13 requires appropriate disclosure of the true nature of AOL's paid services, which
14 complies with California law;

15 G. Reasonable attorneys' fees and the costs of the suit; and

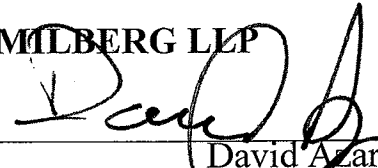
16 H. Such other relief as this Court may deem just and proper.
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

DATED: October 29, 2013

MILBERG LLP


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Attorneys for Plaintiff Harvey Dunn

EXHIBIT A



NEW YORK
LOS ANGELES
DETROIT

Andrei Rado
Telephone: 212-594-5300
arado@milberg.com

July 30, 2013

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

AOL, Inc.
ATTN: General Counsel/Legal
770 Broadway
New York, NY 10003

Re: Demand for Action Pursuant to California Civil Code § 1782

To Whom It May Concern:

We represent an AOL consumer subscriber residing in Los Angeles County, California. This letter serves as notice and demand for corrective action by AOL pursuant to Consumers Legal Remedies Act, California Civil Code § 1782 ("CLRA").

Our client began utilizing AOL internet service provider (ISP) services more than ten years ago. In January 2011, our client subscribed to Time Warner's broadband services, which he continues to utilize to connect to the Internet. Despite replacing the ISP services that AOL had been providing, our client has continued to be charged, and has paid, monthly charges (presently \$17.95/mo) to AOL for a service he does not need and does not use.

Our client, like millions of other consumers, is billed by AOL through his credit card. The charge appears as a line item on our client's monthly credit card bill. The line simply says "AOL Service", it does not explain what services are being paid for. Because our client is a lay consumer with no specialized technical knowledge, he has reasonably believed that he needs to continue to pay AOL to access the Internet, which was his original reason for subscribing to AOL.

Our client is typical of millions of other consumers across the United States who pay AOL for services they do not need and do not use because AOL has not explained to them that the reason they subscribed to AOL no longer exists. AOL is well aware of this. As reported in a *New Yorker* article published January 24, 2011:

The company still gets eighty percent of its profits from subscribers, many of whom are older people who have cable or DSL service but don't realize that they need not pay an additional twenty-five dollars a month to get online and check their email. "The dirty little secret," a former AOL executive says, "is that seventy-five percent of the people who subscribe to AOL's dial-up service don't need it."

July 30, 2013
Page 2

[Emphasis added.]

AOL is easily able to identify whether a particular AOL subscriber uses ISP services simply by checking its own usage statistics.

By billing our client for services AOL knew he did not need and was not using, AOL violated CLRA § 1750 *et seq.*, which prohibits “unfair or deceptive acts or practices.” Because the fundamental purpose of our client’s subscription was to provide him with ISP services, each monthly demand for payment received by our client was a representation to our client that this purpose was addressed by his continued membership and billing, when, as AOL knew, it was not. AOL’s practices violate the following subsections of § 1770, among others:

(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have; and

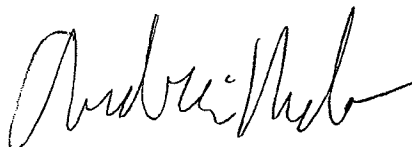
(16) Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not.

AOL’s practices also violate California Business & Professions Code § 17200 and § 17500 *et seq.* and constitute a breach of contract.

Pursuant to California Civil Code § 1782, we hereby demand on behalf of our client and all others similarly situated that AOL immediately correct and rectify these violations by initiating a corrective advertising campaign to re-educate consumers regarding the truth about AOL ISP subscriptions, and refunding the monthly fees to consumers to compensate all damage caused by AOL’s conduct, plus reimbursement for interest.

We await your response.

Sincerely,



Andrei V. Rado
MILBERG LLP

cc: David E. Azar
Milberg LLP

Helen I. Zeldes
Zeldes Haeggquist & Eck, LLP

MILBERG LLP

for the

Central District of California

Plaintiff(s)

v.

AOL, INC.,

Defendant(s)

CV 13-7991 (BM (MAN x))

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* AOL, Inc.
c/o Corporation Service Company which will do Business in California as
CSC - Lawyers Incorporating Service
2710 Gateway Oaks Dr., Suite 150N
Sacramento, CA 95833

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: **MILBERG LLP**

MILBERG LLP
DAVID E. AZAR (SBN 218319)
One California Plaza
300 South Grand Avenue, Suite 3900
Los Angeles, California 90071

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

OCT 29 2013

Date: _____

CLERK OF COURT

Signature of Clerk or Deputy Clerk

ORIGINAL

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to District Judge Consuelo B. Marshall and the assigned Magistrate Judge is Margaret A. Nagle.

The case number on all documents filed with the Court should read as follows:

2:13CV7991 CBM MANx

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge.

Clerk, U. S. District Court

October 29, 2013

Date

By J. Prado

Deputy Clerk

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ Western Division
312 N. Spring Street, G-8
Los Angeles, CA 90012

☐ Southern Division
411 West Fourth St., Ste 1053
Santa Ana, CA 92701

☐ Eastern Division
3470 Twelfth Street, Room 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

I. (a) PLAINTIFFS (Check box if you are representing yourself ☐)

HARVEY DUNN, individually and on behalf of all others similarly situated,

DEFENDANTS (Check box if you are representing yourself ☐)

AOL, INC.,

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same information.)

MILBERG LLP; DAVID E. AZAR

One California Plaza, 300 South Grand Avenue, Suite 3900

Los Angeles, California 90071

Telephone: (213) 617-1200, Facsimile: (213) 617-1975

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same information.)

II. BASIS OF JURISDICTION (Place an X in one box only.)☐ 1. U.S. Government Plaintiff☐ 3. Federal Question (U.S. Government Not a Party)☐ 2. U.S. Government Defendant☒ 4. Diversity (Indicate Citizenship of Parties in Item III)**III. CITIZENSHIP OF PRINCIPAL PARTIES**-For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. ORIGIN (Place an X in one box only.)☒ 1. Original Proceeding ☐ 2. Removed from State Court ☐ 3. Remanded from Appellate Court ☐ 4. Reinstated or Reopened ☐ 5. Transferred from Another District (Specify) ☐ 6. Multi-District Litigation**V. REQUESTED IN COMPLAINT: JURY DEMAND:** ☒ Yes ☐ No (Check "Yes" only if demanded in complaint.)**CLASS ACTION under F.R.Cv.P. 23:** ☒ Yes ☐ No☐ **MONEY DEMANDED IN COMPLAINT:** \$ _____**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
28 U.S.C. 1332(d); 28 U.S.C. 1391(a); Cal. Civ. Code Section 1750, et seq.; Cal. Bus. & Prof. Code Section 17200, et seq. Plaintiff seeks declaratory judgment, injunctive relief, restitution and disgorgement of Defendant's profit from the false representation that Plaintiff has to continue making monthly payments in order to access AOL service.**VII. NATURE OF SUIT** (Place an X in one box only.)

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 462 Naturalization Application	Habeas Corpus:	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 290 All Other Real Property	TORTS	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 140 Negotiable Instrument	PERSONAL PROPERTY	PERSONAL PROPERTY	<input type="checkbox"/> 530 General	SOCIAL SECURITY
<input type="checkbox"/> 450 Commerce/ICC Rates/Etc.	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	Other:	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org.	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.)	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 863 DIWC/DIWW (405 (g))
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 340 Marine	BANKRUPTCY	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 865 RSI (405 (g))
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 560 Civil Detainee Conditions of Confinement	FEDERAL TAX SUITS
<input checked="" type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	FORFEITURE/PENALTY	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 891 Agricultural Acts	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 355 Motor Vehicle Product Liability	CIVIL RIGHTS	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 893 Environmental Matters	REAL PROPERTY	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 690 Other	
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 441 Voting	LABOR	
<input type="checkbox"/> 896 Arbitration	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 710 Fair Labor Standards Act	
<input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 720 Labor/Mgmt. Relations	
<input type="checkbox"/> 950 Constitutionality of State Statutes		<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 445 American with Disabilities-Employment	<input type="checkbox"/> 740 Railway Labor Act	
			<input type="checkbox"/> 446 American with Disabilities-Other	<input type="checkbox"/> 751 Family and Medical Leave Act	
			<input type="checkbox"/> 448 Education	<input type="checkbox"/> 790 Other Labor Litigation	
				<input type="checkbox"/> 791 Employee Ret. Inc. Security Act	

FOR OFFICE USE ONLY:

Case Number:

CV13-7991

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

CIVIL COVER SHEET

VIII. VENUE: Your answers to the questions below will determine the division of the Court to which this case will most likely be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

Question A: Was this case removed from state court? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," go to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	STATE CASE WAS PENDING IN THE COUNTY OF:		INITIAL DIVISION IN CACD IS:
	<input type="checkbox"/> Los Angeles		Western
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo		Western
	<input type="checkbox"/> Orange		Southern
	<input type="checkbox"/> Riverside or San Bernardino		Eastern

Question B: Is the United States, or one of its agencies or employees, a party to this action? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "no," go to Question C. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	If the United States, or one of its agencies or employees, is a party, is it:		INITIAL DIVISION IN CACD IS:
	A PLAINTIFF? Then check the box below for the county in which the majority of DEFENDANTS reside.	A DEFENDANT? Then check the box below for the county in which the majority of PLAINTIFFS reside.	
	<input type="checkbox"/> Los Angeles	<input type="checkbox"/> Los Angeles	Western
	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	<input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo	Western
	<input type="checkbox"/> Orange	<input type="checkbox"/> Orange	Southern
	<input type="checkbox"/> Riverside or San Bernardino	<input type="checkbox"/> Riverside or San Bernardino	Eastern
	<input type="checkbox"/> Other	<input type="checkbox"/> Other	Western

Question C: Location of plaintiffs, defendants, and claims?	A. Los Angeles County	B. Ventura, Santa Barbara, or San Luis Obispo Counties	C. Orange County	D. Riverside or San Bernardino Counties	E. Outside the Central District of California	F. Other
Indicate the location in which a majority of plaintiffs reside:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Indicate the location in which a majority of defendants reside:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Indicate the location in which a majority of claims arose:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

C.1. Is either of the following true? If so, check the one that applies:

- ☐ 2 or more answers in Column C
- ☐ only 1 answer in Column C and no answers in Column D

Your case will initially be assigned to the SOUTHERN DIVISION.
Enter "Southern" in response to Question D, below.

If none applies, answer question C.2 to the right. →

C.2. Is either of the following true? If so, check the one that applies:

- ☐ 2 or more answers in Column D
- ☐ only 1 answer in Column D and no answers in Column C

Your case will initially be assigned to the EASTERN DIVISION.
Enter "Eastern" in response to Question D, below.

If none applies, go to the box below. ↓

Your case will initially be assigned to the WESTERN DIVISION.
Enter "Western" in response to Question D below.

Question D: Initial Division?	INITIAL DIVISION IN CACD
Enter the initial division determined by Question A, B, or C above: →	WESTERN DIVISION

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

CIVIL COVER SHEET

IX(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ NO ☐ YES

If yes, list case number(s): _____

IX(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ NO ☐ YES

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
- ☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
- ☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- ☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

**X. SIGNATURE OF ATTORNEY
(OR SELF-REPRESENTED LITIGANT):** _____

DATE: October 29, 2013

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))